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In the Supreme Court of the United States

OCTOBER TERM, 1970

UNITED STATES OF AMERICA, PETITIONER

v.

MISSISSIPPI CHEMICAL CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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Respondents attempt to deny the conflict between the decision below and *Penn Yan Agway Cooperative, Inc. v. United States*, 417 F. 2d 1372 (Ct. Cl.), on the one hand, and *M.F.A. Central Cooperative v. Bookwalter*, 427 F. 2d 1341 (C.A. 8), petition for a writ of certiorari pending, No. 824, this Term, on the other, which we acknowledged in our memorandum in *M.F.A.*, and asserted in our petition here.

I

This is precisely the opposite of the position taken by the respondents in their brief in the Fifth Circuit, which was filed before the Eighth Circuit reversed the

(f)

district court in *M.F.A.* The respondents there pointed out (p. 38) that the "legal principles involved" in the three cases were "identical." They are no less identical now.

II

In any event, the fact that there is a conflict between the lower courts is not affected by factual distinctions relating to the value of the Class C stock involved in each of the cases, as respondents now contend. The distinctions they suggest are without substance.

(1) Respondents note the finding in *M.F.A.* (Br. 6) that the stock there had "substantial value" while the *Mississippi Chemical* opinion (Br. 8) observed that the stock there was "without any appreciable market value", and in *Penn Yan Agway* (Br. 5) the court said that "there was no market for such stock." In doing so, respondents misconceive the nature of the differences between the lower courts on this point. These factual differences do not affect the underlying legal issue. That issue does not involve the market value of the stock, but turns on the legal effect of the "intrinsic value" of the stock—"its value as a capital contribution to a cooperative under the plan of the Congress" (Br. App. 53)—in determining the character of the stock for tax purposes. In *M.F.A.* the Eighth Circuit considered intrinsic value and concluded that the stock had substantial value. In *Mississippi Chemical* and *Penn Yan Agway* the Fifth Circuit and the Court of Claims refused to consider intrinsic value and concluded that the stock had only nominal value.

(2) Respondents state (Br. 7) that there was some evidence in the *M.F.A.* record of transactions indicating that the Class C stock there could be freely transferred by the cooperatives, while there is no comparable evidence in the record in the instant case. But the record here shows that on three occasions, from September, 1959, to June, 1963, Class C stock of the New Orleans Bank was transferred from one cooperative to another (R. 250).

(3) Respondents also urge (Br. 9-10) that the Class C stock in *M.F.A.* was being revolved over a shorter period than the Class C stock in this case. They note a reduction in the St. Louis bank's Class A stock from \$10,457,000 in 1956 to zero in 1967. The reduction in the New Orleans bank's Class A stock is represented as \$6,928,100 in 1956 to \$4,880,000 in 1963. Though this is accurate, it is misleading. The time periods are not comparable. Actually, the 1967 annual report of the St. Louis bank introduced in the *M.F.A.* case shows that the Class A stock of the St. Louis bank declined from \$10.4 million in 1956 to \$4.2 million in 1963. While the present record does not indicate precisely when the government's investment in the New Orleans bank will be retired, thus rendering that bank's Class C stock eligible for redemption, Exhibit W in the *M.F.A.* record states (p. 2):

The St. Louis Bank for Cooperatives was the fifth district Bank for Cooperatives to repay all of its Government capital in full. It is anticipated that the other seven district banks, as well as the Central Bank for Cooperatives, will

have accomplished the retirement of the Government's investment in their banks by 1971. [Emphasis added.]

The slight differences in the rates at which the funds are revolving are insignificant.

III

In sum, the distinctions suggested by respondents are distinctions without a difference, as they themselves contended when they briefed this case in the court of appeals. The critical facts in all of the cases are (1) that the taxpayers purchased the Class C stock of federally created regional banks for cooperatives in connection with loans secured from those institutions, and (2) that the characteristics of that stock and the rights and obligations of its owners flow from a capital structure prescribed by federal statute and uniform for all regional banks. These facts make indistinguishable the basic issue involved in all of the cases.

Respectfully submitted.

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